

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 2004-324-E - ORDER NO. 2004-603  
DECEMBER 9, 2004

IN RE: Request of Duke Power to Continue Fuel	) ORDER
Factor and Alter Hearing Schedule.	) APPROVING
	) MOTION

This matter comes before the Public Service Commission of South Carolina (“Commission”) from Duke Power, a division of Duke Energy Corporation, (“Duke” or the “Company”) for approval of a Motion to Continue Fuel Factor and Alter Hearing Schedule. Duke’s Motion was filed on November 15, 2004, with reference to South Carolina Code Ann. Sections 58-27-865 and 58-27-870 (F) and applicable Rules and Regulations of the Commission. A letter from Duke to the Interim Executive Director of this Commission followed on November 16, 2004. That letter set forth Duke’s proposal to forgo and write-off recovery of fuel costs of up to \$16 million, to the extent that any under-recovery occurred and occurred in the time frame set forth in the letter. As required by statute, Duke served a copy of its Motion and letter upon the counsel for Consumer Advocate for the State of South Carolina.

The Consumer Advocate’s Attorney notified Duke and the General Counsel of this Commission by emails dated November 19, 2004, (relevant to Duke’s Motion) and dated November 29, 2004, (relevant to Duke’s Letter), that (i) as to the Motion, “...the

Consumer Advocate has no objection to the Commission moving [Duke's] Annual Fuel Proceeding to August<sup>1</sup>”, and (ii) as to the Letter “The [Consumer Advocate] is not prepared to offer an opinion on that matter<sup>2</sup>...”

According to Duke's Motion, the relief sought by Duke does not require a determination of Duke's entire rate structure and overall rate of return and the proposed continuation of the presently approved fuel factor would not result in any rate increase to Duke. Furthermore, Duke states that, if this Commission grants its Motion, such approval would necessarily result in aiding this Commission's orderly rate administration.

Duke's Motion comments that the relief sought in its Motion is allowed under §58-27-870 (F) of the South Carolina Code Annotated (1976, as amended), and the relief sought is consistent with Section 58-27-865, of the South Carolina Code Annotated (1976, as amended) (hereinafter, “Fuel Statute”).

Duke's Motion notes that this Commission issued its Order No. 2004-274, on October 14, 2004, in Docket Number 2004-3-E, which established Duke's fuel factor for the period June 2004 through May, 2005 at 1.150 cents per kWh, the same level as its fuel factor approved in 2003.

Duke's Motion observes that this Commission's annual schedule of hearing dates for the three incumbent utilities would cause the Company's next fuel hearing to be

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<sup>1</sup> The Consumer Advocate's email added that, “The only thing I would note in the Motion that I do not agree with is the four weeks/two weeks schedule for filing of testimony, which we have discussed before. Given that there is no fuel “filing” as such, intervenors should have more time to review Company testimony before their's (sic) is due. Perhaps six weeks/two weeks would be a more realistic schedule. Obviously, the schedule is something that is in the Commission's discretion.

<sup>2</sup> The Consumer Advocate's email added that “...because we have not conducted a review of all the potential consequences, such as whether the number should be higher, or what the impact would be on Duke's earnings. Therefore, we believe that this is a matter which should be reviewed by the ORS, since it will be responsible for investigating Duke's fuel costs beginning next year.

scheduled in the spring of 2005. According to the Company's Motion, all three incumbent electric utilities presently have their annual fuel hearings scheduled in close proximity to each other in the spring of each year.

Duke's Motion comments that the present schedule requires this Commission to make a decision on each incumbent electric utility's fuel factor shortly before the end of the calendar month. Duke adds that this has required the Commission's Staff to work expeditiously to put the electric utilities' fuel factor into effect on the first day of the following calendar month.

According to the Company's Motion, the traditional schedule has caused a hardship on the Commissioners, Commission Staff, and the incumbent electric utilities. Duke observes that in recognition of this, the Commission's Staff held consultations in the spring of 2004, with representatives of South Carolina Electric and Gas Company, Progress Energy Carolinas, Inc. and Duke.

We understand that as a result of these consultations, the Commission's Staff and representatives of all three electric utilities agreed on a schedule that would "stagger" the dates of the hearings of this Commission to set the annual fuel factor for each incumbent electric utility.

We are informed by Duke's Motion that by agreement of the participants, Duke is requesting to have its annual fuel hearing scheduled before this Commission on or about, the last Wednesday in August 2005, with an effective date for the annual fuel factor of October 1, 2005.

Duke's Motion requests that this Commission (i) allow it to continue recovery of its fuel costs with its current fuel factor, 1.150 cents per kWh, as presently approved by this Commission, from June 1, 2005 until October 1, 2005. and (ii) to establish a new test year for Duke's annual fuel proceeding of July through June and (iii) due to the transition from the present hearing schedule to the proposed hearing schedule, for only Duke's 2005 fuel case, the months of April 2004 through June 2004 will be included in the test period.

Duke's Letter of November 16, 2004, relevant to this Docket and addressed to the Interim Executive Director of this Commission (hereinafter, "Letter"), remarks that in its 2004 fuel rate proceeding (Docket No. 2004-3-E), Duke projected that under its proposed fuel rates it would under-recover its fuel costs during the 2004-2005 fuel year. Also that the Commission approved Duke's proposed rate, after hearing, by order number 2004-274, issued on October 14, 2004.

According to Duke's Letter, and as Duke projected in its 2004 Fuel Proceeding, Duke has been under-recovering its fuel costs under its presently approved fuel factor<sup>3</sup>. On a monthly basis, Duke compares revenues collected from its South Carolina retail customers through the current fuel factor to Duke's actual fuel costs allocable to Duke's South Carolina retail customers. If Duke has over-recovered, it records a liability for that month which accrues to the benefit of Duke's South Carolina retail customers in a future annual review of base rates for fuel costs. If Duke has under-recovered, it records a receivable for that month for collection from Duke's South Carolina retail customers in a

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<sup>3</sup> Duke points out that its fuel costs are increasing in large part due to increasing costs of Duke's coal purchases and Duke's increasing use of its coal units to meet electric demand.

future annual review of base rates for fuel costs. Duke comments that the cumulative effect is either a liability or a receivable on Duke's books. Duke explains that at a future annual review of base rates for fuel costs, Duke will include, in its calculation of an appropriate fuel factor for the upcoming period, any over or under-recovery known at that time plus an estimated amount for the two month calendar period until a new fuel factor would become effective.

Duke explains in its Letter that the continuance of Duke's present fuel factor until October 1, 2005 as requested in Duke's Motion, could lead to a further and greater under-recovery of fuel costs. Duke reminds this Commission that in Duke's 2004 Fuel Proceeding, members of this Commission expressed concern about possible "rate shock" to Duke's retail customers at the conclusion of the 2004/2005 fuel cycle, if and when Duke sought to recover fuel costs not recovered by the current fuel factor. Duke's Letter also states that some of Duke's large industrial customers have expressed concerns in the past when conditions have required Duke to seek an increase in its fuel factor.

Duke's Letter comments that to mitigate these concerns, Duke requested this Commission's approval to forgo the collection of and write-off of anticipated fuel revenues (that is, the projected under-recovery) up to an amount of 16 million dollars.

Specifically, Duke observes in its Letter that it will write-off the cumulative receivable balance for fuel costs, as of the date of this Commission's order approving Duke's request to forgo recovery of accrued fuel costs and will also forgo and write-off

recovery of any additional receivable balance for fuel costs as it occurs up to 16 million dollars, accrued through September 30, 2005<sup>4</sup>.

Duke's Letter observes that if this Commission approves Duke's request and the actual under-recovery is at least 16 million dollars, such approval will reduce the amount that Duke would seek to recover in Duke's next annual hearing to review base rates for fuel costs by 16 million dollars.

According to Duke's Letter, if the projected under-recovery is realized, when Duke calculates its recommended fuel factor for 2005/2006, the calculation will result in a factor that will be approximately 0.07 cent/kWh less than it otherwise would be and Duke argues that that would result in an actual savings for all of Duke's customers.

Based upon our review of Duke's Motion, Duke's Letter, the two emails from the Consumer Advocate for the State of South Carolina, the statutes for which citations were provided, and other applicable regulations and statutes, this Commission makes the following Findings of Fact and Conclusions of Law.

#### **FINDINGS OF FACT**

1. This Commission issued its Order No. 2004-274, on October 14, 2004, in Docket Number 2004-3-E, and established Duke's fuel factor for the period June 2004 through May, 2005 at 1.150 cents per kWh, the same level as its fuel factor approved in 2003.

2. This Commission finds that its annual schedule of hearing dates for the three incumbent utilities would have caused Duke's next fuel hearing to be scheduled in

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<sup>4</sup> Duke points out that Duke currently anticipates fuel under-recovery in excess of \$16 million by September 30, 2005. However, if, due to circumstances such as milder than expected weather, Duke's actual fuel under-recovery is less than \$16 million, Duke observes that it would write-off only the under-recovery that does occur.

the spring of 2005. This Commission also finds that all three incumbent electric utilities presently have their annual fuel hearings scheduled in close proximity to each other in the spring of each year.

3. This Commission finds that the present schedule requires this Commission to make a decision on each incumbent electric utility's fuel factor shortly before the end of the calendar month. Also, we find that this has required the Commission's Staff to work expeditiously to put the electric utilities' fuel factor into effect on the first day of the following calendar month.

4. This Commission finds that the traditional schedule has caused a hardship on the Commissioners, Commission Staff, and the incumbent electric utilities. In recognition of this, the Commission's Staff held consultations in the spring of 2004, with representatives of South Carolina Electric and Gas Company, Progress Energy Carolinas, Inc. and Duke.

5. This Commission finds that as a result of these consultations, the Commission's Staff and representatives of all three electric utilities agreed on a schedule that would "stagger" the dates of the hearings of this Commission to set the annual fuel factor for each incumbent electric utility. By agreement of the participants, it was agreed that Duke could Move this Commission to have its annual fuel hearing scheduled before this Commission on or about, the last Wednesday in August 2005, with an effective date for the annual fuel factor of October 1, 2005.

6. This Commission finds that the granting of the relief sought by Duke in its Motion will aid in this Commissions orderly rate administration.

7. This Commission finds that Duke should be allowed to continue recovery of its fuel costs with its current fuel factor, 1.150 cents per kWh, from June 1, 2005 until October 1, 2005.

8. This Commission finds that a new test year for Duke's annual fuel proceeding of July through June should be established.

9. This Commission finds that Duke should, due to the transition from the present hearing schedule to the proposed hearing schedule, include in its test year, for only Duke's 2005 fuel case, the months of April 2004 through June 2004.

10. This Commission finds that Duke's 2005 fuel case should be scheduled to be heard on or about the last Wednesday in August 2005, with an effective date for the annual fuel factor of October 1, 2005.

11. This Commission finds that Duke may under-recover its fuel costs and that the continuation of Duke's present fuel factor could lead to an even greater under-recovery and possible "rate shock" to Duke's retail customers at the conclusion of the 2004/2005 fuel cycle.

12. This Commission finds that Duke has large industrial customers who have expressed concerns in the past when conditions have caused Duke to seek an increase in its fuel factor.

13. This Commission finds that Duke's request to forgo the collection of and write-off of anticipated fuel revenues (that is, the projected under-recovery) up to an amount of 16 million dollars is reasonable.



14. This Commission finds that the protocol set forth by Duke in its Letter concerning the computation of any fuel revenues to forgo and write-off is reasonable.

15. This Commission finds that the Consumer Advocate did not oppose the relief sought in Duke's Motion and took no position on Duke's Letter.

16. This Commission finds that this Matter was noticed appropriately and a proper hearing was held by noticing and hearing this Matter at its weekly agenda meeting.

### **CONCLUSIONS OF LAW**

Based on the above-stated Findings of Fact, this Commission makes the following Conclusions of Law:

1. This Commission concludes that the S.C. Code Ann. Section 58-27-870(F) permits this Commission to grant the relief requested in Duke's Motion and Letter.

2. This Commission concludes that the relief sought is consistent with Section 58-27-865, of the South Carolina Code Annotated (1976, as amended).

3. This Commission concludes that the approval of Duke's Motion and Letter will not require a determination of Duke's entire rate structure and overall rate of return.

4. This Commission concludes that the approval of Duke's Motion and Letter should not result in any rate increase to Duke's customers.

5. This Commission concludes that Duke should be allowed to continue recovery of its fuel costs with its current fuel factor, 1.150 cents per kWh, from June 1, 2005 until October 1, 2005.

6. This Commission concludes that a new test year for Duke's annual fuel proceeding of July through June should be established;

7. This Commission concludes that Duke should be allowed, due to the transition from the present hearing schedule to the proposed hearing schedule, to include in its test year, for only Duke's 2005 fuel case, the months of April 2004 through June 2004.

8. This Commission concludes that Duke's 2005 fuel case should be scheduled to be heard on or about the last Wednesday in August 2005, with an effective date for the annual fuel factor of October 1, 2005.

9. This Commission concludes that Duke's request to forgo the collection of and write-off of anticipated fuel revenues (that is, the projected under-recovery) up to an amount of 16 million dollars is reasonable.

10. This Commission concludes that the protocol set forth by Duke in its Letter concerning the computation of any fuel revenues to forgo and write-off is reasonable.

**IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT:**

1. Duke is allowed to continue recovery of its fuel costs with its current fuel factor, 1.150 cents per kWh, from June 1, 2005 until October 1, 2005.

2. Duke is allowed to establish a new test year for Duke's annual fuel proceeding of July through June.

3. Duke is allowed, due to the transition from the present hearing schedule to the proposed hearing schedule, to include in its test year, for only Duke's 2005 fuel case, the months of April 2004 through June 2004.

4. Duke's 2005 fuel case will be scheduled to be heard on or about the last Wednesday in August 2005, with an effective date for the annual fuel factor of October 1, 2005.

5. Duke's request to forgo the collection of and write-off of anticipated fuel revenues (that is, the projected under-recovery) up to an amount of 16 million dollars is hereby approved.

6. The protocol set forth by Duke in its Letter concerning the computation of any fuel revenues to forgo and write-off is hereby approved.

7. This Order shall become effective upon the signature of the Chairman and shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

/s/  
Randy Mitchell, Chairman

ATTEST:

/s/  
G. O'Neal Hamilton, Vice Chairman

(SEAL)